



Department of Defense DIRECTIVE

August 23, 1988
NUMBER 1010.9

ASD (FM&P)

SUBJECT : DoD Civilian Employee Drug Abuse Testing Program

References: (a) DoD Directive 1010.9, "DoD Civilian Employees Drug Abuse Testing Program, " April 8, 1985 (hereby canceled)
(b) Executive Order 12564, "Drug-Free Federal Workplace, " September 15, 1986
(c) Title 5, United States Code, "Privacy Act, " Sections 75, 552(a) , 7301, (Supp 1987), and 8331 (20)
(d) Public Law 253, 80th Congress , "National Security Act of 1947 , " June 26, 1947, as amended
(e) through (m) , see enclosure 1

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) to:

1. Update the establishment of the DoD Civilian Employee Drug Abuse Testing Program under references (b) and (c) .
2. Update policy, prescribe procedures, and assign responsibilities for drug abuse urinalysis testing for DoD civilian employees (hereafter referred to as "employees") .

B. APPLICABILITY AND SCOPE

This Directive:

1. Applies to the Office of the Secretary of Defense (OSD) , the Military Departments (including their Reserve components) , the Organization of the Joint Chiefs of Staff (OJCS) , the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components"). Testing of foreign national employees stationed outside the United States may be conducted under this Directive only as authorized by and consistent with intergovernmental and labor agreements negotiated on a country-by-country basis.
2. Shall not be deemed to limit the authorities of the Director of Central Intelligence under "The National Security Act of 1947" (reference (d)) , as amended, or the statutory authorities of the National Security Agency (NSA) or the Defense Intelligence Agency (DIA) . Implementation of this Directive within the Intelligence Community, as defined in Executive Order 12333, (reference (e)), shall be subject to the applicable provisions of 5 U. S. C.7301 (reference (c)).
3. Applies to drug abuse testing of DoD civilian employees conducted on or after April 27, 1988.

4. Shall not be construed to render invalid any test conducted before April 27, 1988 under a DoD Component's drug abuse testing program.

5. Requires the Department of Defense to comply with Department of Health and Human Services (HHS) guidelines published in the Federal Register on April 11, 1988.

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

D. POLICY

It is DoD policy:

1. To implement E.O. 12564 (reference (b)) fully and to comply with 5 U.S.C. 7301 (reference (c)). The findings of the President; accompanying reference (b), are in enclosure 3.

2. That DoD employees are required to refrain from using illegal drugs.

3. That the use of illegal drugs by DoD employees, whether on duty or off duty, is contrary to DoD efficiency.

4. To achieve the goal of a drug-free workplace. Because the DoD mission is to protect and defend the United States, DoD employees must be free from the influence of drugs and be able to work in a drug-free environment. Public confidence in the Department of Defense is essential to the DoD mission. The Department of Defense must not be compromised by drugs in the workplace. To accomplish this, the Department of Defense shall begin a program of drug testing that also includes provisions for employee privacy, confidentiality, employee assistance programs, and supervisory training.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) is responsible for the overall policy and administration of this program. DoD Components must obtain approval of the ASD(FM&P) for implementing documents and testing-designated positions.

2. The Assistant Secretary of Defense (Health Affairs) (ASD(HA)) is responsible for technical and scientific aspects of the biochemical testing program and for the employee assistance programs (EAPs). DoD, Components must obtain approval of the ASD(HA) for specimen collection and laboratory testing procedures prescribed in implementing documents.

3. The General Counsel of the Department of Defense (GC, DoD) is responsible for consultation with the Attorney General under E.O. 12564 (reference (b)) on DoD Component documents (and amendments thereto) implementing this Directive.

4. Under this Directive, the Director, Washington Headquarters Services (WHS), is the DoD Component Head for employees of WHS, OSD, and DoD Field Activities.

5. The Secretary of the Army is responsible for specimen collection, laboratory testing, and ancillary administrative requirements for employees of OSD and DoD Activities. An applicable memorandum of understanding (MOU) shall be entered into by the Secretary of the Army and the Director, WHS, for this purpose.

6. The Heads of DoD Components:

a. Shall develop a plan and implementing documents for achieving the objective of a drug-free workplace with due consideration to the rights of the Government, the employee, and the general public. Prior to implementation, the plan and the implementing documents shall include the following:

(1) A statement of policy on the DoD Component's expectations on drug use and the action to be anticipated in response to identified drug use.

(2) EAPs emphasizing education and counseling, to include referral where applicable to rehabilitative treatment and programs in accordance with available community resources.

(3) Supervisory training to assist in identifying and addressing illegal drug use by DoD Component employees.

(4) Provision for self-referral and supervisory referral to treatment with maximum respect for individual confidentiality consistent with safety and security.

(5) Provision for identifying users of illegal drugs, including testing on a controlled and carefully monitored basis in accordance with this Directive.

(6) The positions designated for random drug testing along with the criteria and procedures applied in designating such positions for drug testing, including the justification for such criteria and procedures.

b. Shall establish a program for random testing of employees in sensitive positions for the use of illegal drugs. Testing-designation positions are positions that have been designated for random testing. The extent to which such employees are tested and the criteria for such testing shall be determined by the Head of each DoD Component, based on the DoD Component's mission and its employees' duties, the efficient use of DoD Component resources, and the danger to public health and safety or to U.S. national security that might result from the failure of an employee to discharge his or her position adequately.

c. Shall establish a program for voluntary employee drug testing.

d. Are authorized, in addition to the testing program established under paragraph E.6.b., above, to test any employee for illegal use under the following circumstances:

(1) When there is a reasonable suspicion that any employee uses illegal drugs.

(2) In an examination authorized by the DoD Component as the result of an accident or an unsafe practice.

(3) As part of, or as follow-up to, a counseling or rehabilitation program to which an employee, found to have used illegal drugs, has been referred through the DoD Component's EAP.

e. Are authorized to test any applicant for illegal drug use.

f. Are authorized to take action as described in subsection F.2., below, upon finding that an employee or applicant has used illegal drugs.

F. PROCEDURES

1. Drug Testing Procedures

a. Sixty days before implementing a drug testing program under this Directive, DoD Components shall notify all employees that testing for use of illegal drugs is to be conducted and that they may seek counseling and rehabilitation. DoD Components also shall inform them of the procedures for obtaining such assistance through the DoD Component's EAP. DoD Component drug testing programs already ongoing are exempted from the 60-day notice requirement. DoD Components may take action under paragraph E.6.e., above, without reference to the 60-day notice period.

b. DoD Components should ensure that a specific written notice is given to each employee in a testing-designated position no later than 30 days before testing begins. DoD Components should obtain a written acknowledgement of receipt of the notice.

c. Before conducting a drug test, the DoD Component shall inform the employee to be tested of the opportunity to submit medical documentation that may support a legitimate use for a specific drug. The test may be given any time after the employee is so notified.

d. Urine specimens shall be processed using strict chain-of-custody procedures from the point of collection until the results are reported by the drug testing laboratory.

e. A drug program coordinator shall be assigned to coordinate urine collection at the work location.

f. Urine collection and laboratory testing procedures promulgated by the ASD(HA) and the Secretary, HHS, shall be followed.

g. All DoD Components shall use drug testing laboratories that are certified by the Department of Defense or the Secretary, HHS.

h. Each DoD Component's implementing document shall contain the following:

(1) Procedures for timely submission of requests for retention of records and specimens.

(2) Procedures for retention and retesting of specimens confirmed as positive.

(3) Procedures for providing urine specimens that allow individual privacy, unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.

(4) Procedures to protect the confidentiality of test results, under 5 U.S.C 552a and 7301 (reference (c)), and related medical and rehabilitation records consistent with applicable law and regulation.

2. Personnel Actions

a. Drug Use Determination. The determination that an applicant or employee has used illegal drugs may be made on the basis of direct observation, a criminal conviction, confirmed positive results of a test conducted under the DoD Component's drug testing program, the employee's own admission, or other applicable evidence. Actions taken against an employee, on a finding of illegal drug use under 5 U.S.C 75 (reference (c)), must be supported by the evidence.

b. Applicants

(1) Applicants who are not current employees and who refuse to be tested must be refused that employment.

(2) All applicants with verified positive test results shall be refused employment. Applications from such individuals shall not be considered for employment for a period of 6 months from the date of the test results.

c. DoD Components, in addition to any applicable personnel actions, shall refer any employee found to have used illegal drugs to an EAP for assessment, counseling, and, if applicable, referral for treatment or rehabilitation. Employee participation in treatment or rehabilitation programs through the EAP does not prevent the DoD Component from initiating any disciplinary action authorized on a finding of illegal drug use, including removal from Federal service.

d. DoD Components shall not allow any employee to remain on duty in a sensitive position who is found to use illegal drugs before successful completion of rehabilitation through an EAP. As part of a rehabilitation or counseling program, the Secretary of Defense, or the head of each DoD Component, may allow an employee to return to duty in a sensitive position if it is determined that this action should no longer pose a danger to public health or safety or to U.S. national security.

e. DoD Components shall initiate action to discipline any employee found using illegal drugs provided that such action is not required for an employee who does the following:

(1) Voluntarily identifies himself or herself as a user of illegal drugs or who volunteers for drug testing under paragraph E.6.c., above, before being identified through other means.

(2) Obtains counseling or rehabilitation through an EAP.

(3) Thereafter, refrains from using illegal drugs.

f. Discretionary Disciplinary Actions. Upon the first findings that an employee has used illegal drugs, a range of disciplinary actions are available to a DoD Component from a written reprimand to removal. Except for employees who voluntarily identify themselves as users of illegal drugs, obtain applicable counseling and rehabilitation, and, thereafter, refrain from illegal drug use, DoD Components are required to begin disciplinary action against employees who are found to use illegal drugs. DoD Components have discretion in deciding what disciplinary measures to initiate, consistent with the requirements of the "Civil Service Reform Act" (reference (f)) and other applicable factors. Among the disciplinary measures available to the DoD Components are the following:

(1) Reprimanding the employee in writing.

(2) Suspending the employee for 14 days or less consistent with the procedural requirements in 5 CFR 752.203 (reference (g)).

(3) Suspending the employee for 15 days or more consistent with the procedural requirements in Part 752.404 of reference (g).

(4) Suspending the employee, consistent with the procedural requirements in 5 CFR 752.404 (reference (g)), until such time as he or she successfully completes counseling or rehabilitation or until the DoD Component determines that action other than suspension is more applicable to the individual situation.

(5) Removing the employee from Federal service, consistent with the procedural requirements of reference (g), for confirmed illicit use of an illegal drug; refusal to take a drug test authorized by E.O. 12564 (reference (b)); refusal to obtain or successfully complete counseling or rehabilitation as required by reference (b); or once having completed counseling or rehabilitation, failing to refrain from illegal drug use.

g. Mandatory Disciplinary Action. Initiation of removal from Federal service is required after a second finding that the employee has used illegal drugs.

h. Verified positive test results and information developed by the DoD Component in the course of the drug testing of the employee, subject to the limitations of 5 U.S.C. 552a (reference (c)), may be considered in processing any adverse action against the employee or for other administrative purposes. Preliminary test results may not be used in an administrative proceeding.

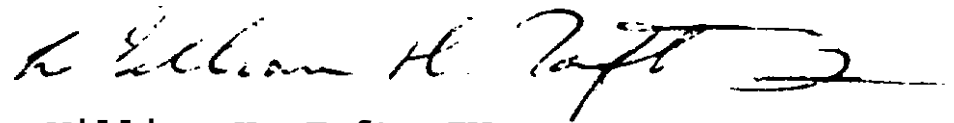
i. Drug testing shall not be conducted under this Directive for gathering evidence for use in criminal proceedings. DoD Components are not required to report to the Attorney General for investigation or prosecution any information, allegation, or evidence of violations of any provision of 21 U.S.C. 13 (reference (h)) received as a result of drug testing conducted under this Directive.

j. An employee who refuses to be tested, when so required, shall be subject to the full range of disciplinary action, including dismissal.

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G. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. DoD Components shall forward two copies of implementing documents, reflecting any changes to existing civilian employee drug abuse programs necessitated by this Directive, to the Assistant Secretary of Defense (Force Management and Personnel) within 120 days.



William H. Taft, IV
Deputy Secretary of Defense

Enclosures - 3

1. References
2. Definitions
3. Findings by the President

REFERENCES, continued

- (e) Executive Order 12333, "United States Intelligence Activities," December 4, 1981
- (f) Public Law 95-454, "Civil Service Reform Act of 1978," October 13, 1978
- (g) Title 5, Code of Federal Regulations, Parts 752.203 and 752.404
- (h) Title 21, United States Code, Chapter 13
- (i) Title 21, United States Code, Section 802(6)
- (j) DoD Directive 1010.6, "Rehabilitation and Referral Services for Alcohol and Drug Abusers," March 13, 1985
- (k) Federal Personnel Manual (FPM) Supplement 792-2, February 29, 1980
- (l) Executive Order 10450, "Security Requirements for Government Employment," April 27, 1953
- (m) Executive Order 12356, "National Security Information," April 2, 1982

DEFINITIONS

1. DoD Civilian Employee. A DoD employee paid from appropriated funds.
2. Employee Assistance Programs (EAPs). DoD Component-based counseling programs that offer assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems that affect employee job performance. EAPs are responsible for referring employees who are abusing drugs for rehabilitation and for monitoring employees' progress while in treatment as set forth in DoD Directive 1010.6 (reference (j)).
3. Illegal Drugs. A controlled substance included in Schedule I or II, as defined by 21 U.S.C. 802(6) (reference (i)), the possession of which is unlawful under Chapter 13 of 21 U.S.C. (reference (h)). The term "illegal drugs" does not mean the use of a controlled substance under a valid prescription or other use authorized by law.
4. Random Testing. A system of drug testing imposed without individualized suspicion that a particular individual is using illegal drugs. Random testing either may be testing of testing-designated employees occupying a specified area, element, or position, or may be statistically random sampling of such employees based on a neutral criterion; i.e., social security numbers.
5. Reasonable Suspicion. An articulable belief that an employee may have used illegal drugs, among other things, based on the following:
 - a. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug.
 - b. A pattern of abnormal conduct or erratic behavior.
 - c. Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking.
 - d. Information provided either by reliable and credible sources or independently corroborated.
 - e. Newly discovered evidence that the employee has tampered with a previous drug test.
6. Sensitive Position refers to the following:
 - a. An employee in a position that a DoD Component Head designates Special-Sensitive, Critical-Sensitive, or Noncritical-Sensitive, under the FPM Supplement 792-2 (reference (k)), or an employee in a position that a DoD Component Head designates as sensitive in accordance with E.O. 10450, as amended (reference (l)).
 - b. An employee who has been granted access to classified information or may be granted access to classified information under a determination of trustworthiness by a DoD Component Head under E.O. 12356 (reference (m)).
 - c. Individuals serving under Presidential appointments.

d. Law enforcement officers as defined in 5 U.S.C. 8331(20) (reference (c)).

e. Other positions that the DoD Component Head determines to involve law enforcement, U.S. national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.

7. Testing-Designated Positions. Those positions described in Section 7(d) of E.O. 12564 (reference (b)) that additionally are designated by the DoD Component Head as subject to random drug testing of the incumbent under paragraph E.6.b. of this Directive. Testing-designated positions are characterized by their critical safety or security responsibilities as they relate to the mission of the DoD Component. The job functions associated with these positions have a direct and immediate impact on public health and safety, the protection of life and property, law enforcement, or U.S. national security. These positions require the highest degree of trust and confidence. All positions that require that the incumbent possess a security clearance of "Top Secret" or higher may be designated for testing.

8. Verified Positive Test Result. A test result that has been screened positive by a Federal Drug Administration (FDA)-approved immunoassay test, confirmed by a gas chromatography mass spectrometry assay, (or other confirmatory test approved by HHS), and evaluated by the medical review official and determined by him or her to be unjustified.

FINDINGS BY THE PRESIDENT

A. Drug use is having serious adverse effects on a significant proportion of the U.S. work force and results in billions of dollars of lost productivity each year.

B. **The Federal Government**, as an employer, is concerned with the well-being of its employees, the successful accomplishment of Agency missions, and the need to maintain employee productivity.

C. The Federal Government, as the largest employer in the United States, may and should show the way towards achieving drug-free workplaces through a program designed to offer drug users a helping hand and, at the same time, demonstrate to drug users and potential drug users that drugs shall not be tolerated in the Federal workplace.

D. **The profits from illegal drugs provide the single greatest source of income for organized crime, fuel violent street crime, and otherwise contribute to the breakdown of society.**

E. The use of illegal drugs by Federal employees, on or off duty, is inconsistent not only with the law-abiding behavior expected of all citizens, but also with the special trust placed in such employees as servants of the public.

F. **Federal employees who use illegal drugs, on or off duty, tend to be less productive, less reliable, and prone to greater absenteeism than their fellow employees who do not use illegal drugs.**

G. **The use of illegal drugs, on or off duty, by Federal** employees impairs the efficiency of Federal Departments and Agencies, undermines public confidence in them, and makes it more difficult for other employees who do not use illegal drugs to perform their jobs effectively. The use of illegal drugs by Federal employees, on or off duty, also may pose a serious health and safety threat to members of the public and to other employees.

H. The use of illegal drugs by Federal employees, on or off duty, in certain positions evidences less than the complete reliability, stability, and good judgement that is consistent with access to sensitive information and creates the possibility of coercion influence, and irresponsible action under pressure that may pose a serious risk to U.S. national security, the public safety, and the effective enforcement of the law.

I. Federal employees who use illegal drugs must be primarily responsible for changing their behavior and, if necessary, begin the process of rehabilitating themselves.